

ESTTA Tracking number: **ESTTA607399**

Filing date: **06/02/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215813
Party	Plaintiff Crystalline Management, LLC, Najat Kanache
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Date	06/02/2014
Attachments	CRONUT - Opposition to Motion to Dismiss_Part 1.pdf(1405540 bytes) CRONUT - Opposition to Motion to Dismiss_Part 2.pdf(2835927 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NAJAT KANACHE and)
CRYSTALLINE MANAGEMENT, LLC,)

Opposers,)

v.)

INTERNATIONAL PASTRY)
CONCEPTS LLC and)
DOMINIQUE ANSEL,)

Applicants.)

Opposition No.:91215813

OPPOSERS' MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

Opposers Najat Kaanache and Crystalline Management, LLC ("Opposers") have opposed registration of Serial No. 85936327 for the mark CRONUT filed by International Pastry Concepts LLC and Dominique Ansel ("Applicants"). Opposers, through their attorneys of record in this matter, hereby respond to Applicants' Motion to Dismiss.

When the verbiage from Applicants' motion is stripped away, Opposers' First Amended Notice of Opposition¹ (hereafter referred to alternatively as "Notice of Opposition" or "First Amended Notice of Opposition") clearly satisfies the notice pleading requirements of the Board. The facts alleged in the Notice of Opposition

¹ Opposers' Notice of Opposition was amended today as a matter of right pursuant to Federal Rule of Civil Procedure 15 (a)(1)(B), with a copy served upon opposing counsel and filed with the Board. The changes are corrections in Paragraphs 9 and 14 of misplaced uses of "Opposers" instead of "Applicants". For purposes of this memorandum, Opposers treat the Motion to Dismiss as applying against their amended pleading.

demonstrate that Opposers are plausibly entitled to oppose the registration of Applicants' mark. That is, the Notice of Opposition alleges enough facts that would, if proved, establish (1) that Opposers have standing to maintain their opposition proceeding against Applicants, and (2) valid grounds exist for opposing Applicants' mark; i.e., a likelihood of confusion under Section 2(d), descriptiveness under Section 2(e)(1), lack of bona fide use in commerce of the mark in connection with the goods set forth in the application under Section 1(a), misuse of the federal registration symbol under Section 29 and fraud upon the USPTO. See Western Worldwide Entrs. Grp. Inc. v. Qingdao Brewery, 17 U.S.P.Q.2d 1137, 1140 (T.T.A.B. 1990) ("That is to say, in order to survive [a motion to dismiss] petitioner need only have alleged such facts as would, if proved, show that petitioner has standing to petition for cancellation of the registered marks and that a statutory ground for cancelling such registrations exists" [citations omitted]); Caymus Vineyards v. Caymus Med. Inc., 107 U.S.P.Q.2d 1519, 1521 (T.T.A.B. 2013) ("To withstand a motion to dismiss for failure to state a claim upon which relief can be granted, a plaintiff need only allege sufficient factual content that, if proved, would allow the Board to conclude, or to draw a reasonable inference, that (1) the plaintiff has standing to maintain the proceeding, and (2) a valid ground exists for opposing or cancelling the mark.").

Opposers have pleaded sufficient facts that put Applicants on notice of the claims asserted against them. The question of whether Opposers can actually prove the allegations made in the Notice of Opposition is not a matter to be determined by a motion to dismiss, but rather, at a final hearing or upon summary judgment after the parties have had an opportunity to submit evidence in support of their respective

positions. Advanced Cardiovascular Sys. Inc. v. SciMed Life Sys. Inc., 988 F.2d 1157, 26 U.S.P.Q.2d 1038, 1041 (Fed. Cir. 1993). Therefore, nothing more is required of the Notice of Opposition at this early stage in the proceeding and the Board is urged to deny Applicants' motion to dismiss.

I. OPPOSERS HAVE SUFFICIENTLY PLED STANDING AND A LIKELIHOOD OF CONFUSION.

Section 503.02 Trademark Manual of Board Procedure ("TBMP") provides:

A motion to dismiss for failure to state a claim upon which relief can be granted is a test solely of the legal sufficiency of a complaint. In order to withstand such a motion, a complaint need only allege such facts as would, if proved, establish that the plaintiff is entitled to the relief sought, that is, that (1) the plaintiff has standing to maintain the proceeding, and (2) a valid ground exists for denying the registration sought (in the case of an opposition), or for canceling the subject registration (in the case of a cancellation proceeding). To survive a motion to dismiss, a complaint must "state a claim to relief that is plausible on its face."

Therefore, a plaintiff served with a motion to dismiss for failure to state a claim upon which relief can be granted need not, and should not respond by submitting proofs in support of its complaint. Whether a plaintiff can actually prove its allegations is a matter to be determined not upon motion to dismiss, but rather at final hearing or upon summary judgment, after the parties have had an opportunity to submit evidence in support of their respective positions.

A. The legal requirements for standing.

The Federal Circuit has set forth a liberal threshold for determining standing—namely, whether an opposer's belief in damage has a reasonable basis in fact and reflects a real interest in the case. Nextel Commn's, Inc. v. Motorola, Inc., 91 U.S.P.Q.2d 1393, 1400 (T.T.A.B. 2009) (citing Ritchie v. Simpson, 170 F.3d 1092, 50 U.S.P.Q.2d 1023 (Fed. Cir. 1999)). See also TBMP § 309.03(b).

The Board has held that there is no requirement that actual damage be

pleaded or proved, or that an opposer show a personal interest in the proceeding different or "beyond that of the general public", in order to establish standing or to prevail in an opposition. Ritchie, 50 U.S.P.Q.2d at 1027 ("The crux of the matter is not how many others share one's belief that one will be damaged by the registration, but whether that belief is reasonable and reflects a real interest in the issue"). See also Lipton Indus., Inc. v. Ralston Purina Co., 670 F.2d 1024, 213 U.S.P.Q. 185, 189 (C.C.P.A. 1982) ("We regard the desire for a registration with its attendant statutory advantages as a legitimate commercial interest" to confer standing).

To satisfy standing, Opposers must allege facts which, if ultimately proven, establish they have a real interest in this proceeding. See SaddleSprings Inc. v. Mad Croc Brands Inc., 104 U.S.P.Q.2d 1948, 1950 (T.T.A.B. 2012) ("Turning first to the question of standing, petitioner must allege facts in the petition for cancellation which, if ultimately proven, would establish that petitioner has a 'real interest' in the cancellation proceeding"). The TBMP makes clear that "[a] real interest in the proceeding and a reasonable belief of damage may be found, for example, where plaintiff pleads (and later proves): a claim of likelihood of confusion that is not wholly without merit, including claims based upon...prior use of a confusingly similar mark", where "[p]laintiff...has been advised that it will be refused registration when defendant's application matures into a registration, or has a reasonable belief that registration of its application will be refused because of defendant's registration", and where "[p]laintiff has a bona fide intent to use the same mark for related goods...and

believes registration of the mark will be refused in view of defendant's registration". TBMP § 309.03(b). Moreover, "[i]f a plaintiff can show standing on one ground, it has the right to assert any other grounds in an opposition or cancellation proceeding". Id.

**B. Opposer's averments of standing,
a likelihood of confusion and damage.**

Opposers have averred in their Notice of Opposition "[t]he term CRONUTS was coined, created and first used by Opposers, as a contraction of 'creative donuts' and does not have any meaning in the English language or any other language as applied to Opposers' sweet and savory donuts," Notice of Opposition, Par. 1, and that "Opposers adopted and began using the trademark CRONUTS for sweet and savory doughnuts for goods sold in intrastate commerce before Applicants commenced using, and applied to register, the designation CRONUT for their goods," Notice of Opposition, Par. 2. Opposers also assert their pending application SN 85961168 for CRONUTS for "baked goods, namely, sweet donuts and savory donuts" based upon an intention to use, Notice of Opposition, Par. 3, and that the opposed application "has been cited as a potential block" against SN 85961168 "because of confusing similarity," Notice of Opposition, Par. 8. Substantial identity of Opposers' CRONUTS mark with Applicant's CRONUT designation is alleged, Notice of Opposition, Par. 5, and the goods in the opposed application include "doughnuts" which encompasses all types of doughnuts and thus are identical to Opposers' goods, Notice of Opposition, Par. 6. Identical channels of advertising, promotion and trade between Opposers' CRONUT goods and Applicants' CRONUTS goods, and the same customers, are alleged, Notice of

Opposition, Par. 7. Opposers also allege they currently are users of the CRONUTS mark for their goods and have prior rights to Opposers, Notice of Opposition, Par. 9, a likelihood of confusion, Notice of Opposition, Par. 10, and damage arising by registration of Applicants' mark, Notice of Opposition, Par. 11.

"[F]or purposes of the motion to dismiss on the pleadings for lack of standing, we accept as true all well-pled allegations". Ritchie, 50 U.S.P.Q.2d at 1028. Opposers submit they have sufficiently pled standing and a likelihood of confusion so as to defeat Opposers' motion to dismiss. Contrary to Applicants' assertions, the pleading cannot fairly be construed to indicate that Opposers are mere intermeddlers. Opposers' interests clearly are real, and damage arising from registration of Applicants' mark is sufficiently plead. And, since Opposers have sufficiently pled standing on their likelihood of confusion claim, the Board should consider for purposes of this motion that Opposers have standing to bring all of their claims. See Coach Servs Inc. v. Triumph Learning LLC, 668 F.3d 1356, 101 U.S.P.Q.2d 1713, 1727-1728 (Fed. Cir. 2013) and cases cited therein.

Opposers note Applicants' reliance upon Sterling Jewelers Inc. v. Romance & Co., Opposition No. 91207312 (T.T.A.B. March 27, 2014). That case has no bearing here as it involved the failure of an opposer to take any testimony during the proceeding and it failed to meet Board requirements for successfully introducing its registration into evidence. Here, this proceeding is at the pleadings stage and Opposers "need not, and should not respond by submitting proofs in support of its complaint". TBMP § 503.02 Whether Opposers can actually prove their allegations "is a matter to be determined not upon motion to dismiss, but rather at final hearing or upon summary judgment, after the

parties have had an opportunity to submit evidence in support of their respective positions.” Id.

Finally, Applicants’ arguments about Opposer Crystalline Management lacking standing, Motion to Dismiss, p. 10, should be ignored. The Notice of Opposition clearly alleges that Opposer is a co-creator and owner of Opposers’ CRONUTS mark.

C. A claim of likelihood of confusion based upon prior intrastate use is legally sufficient.

Applicants fail to comprehend that an opposition proceeding may be based upon prior intrastate use of a mark. They state “Opposers filed a registration application *after* the date of Applicants and fail to cite first use, as required by law” and “Opposers confusingly filed an ‘intent to use’ application at a later date than Applicants while simultaneously stating first use” Motion to Dismiss, p. 11 (emphasis in original). Opposers’ actions are confusing to Applicants because Applicants do not understand the law. First, prior intrastate use unquestionably is a ground for opposition based upon a likelihood of confusion. As stated by the Board in Panda Travel, Inc. v. Resort Option Enterprises, Inc., 94 U.S.P.Q.2d 1789, 1795 (T.T.A.B. 2009):

Section 2(d) only requires prior use; it does not require use in commerce. Accordingly, an opposer claiming priority may rely on intrastate use. *First Niagara Insurance Brokers, Inc. v. First Niagara Financial Group*, 476 F.3d 867, 81 USPQ2d 1375, 1378 (Fed. Cir. 2007); *Maids to Order of Ohio, Inc. v. Maid-to-Order, Inc.*, 78 USPQ2d 1899, 1909 (TTAB 2006) (“Priority may be based on intrastate user of a mark”).

Second, in order for an application to be based upon actual use under Section 1(a) of the Act, the mark must be used “in commerce”. “Commerce” is defined in Section 45 as “all commerce which may lawfully be regulated by Congress”. Such commerce is “interstate, territorial, and between the United States and a foreign country”. Trademark

Manual of Examining Procedure § 901.03. At the time Opposers filed their applications to register their CRONUTS mark, they had not used the marks in “commerce”. Hence, Opposers filed their CRONUTS applications based upon an intention to use the mark.

2. APPLICANTS’ ARGUMENTS IN THEIR MOTION TO DISMISS ARE MISPLACED, IRRELEVANT OR RELY UPON INAPPLICABLE LAW.

Applicants’ arguments in their motion to dismiss are misplaced, irrelevant or rely upon inapplicable law. Such arguments are as follows:

A. Opposers’ goods are not a croissant-donut hybrid pastry.

Applicants argue that Opposers’ goods are not a croissant-donut hybrid pastry. Motion to Dismiss, pp. 2, 6. Opposers have not alleged that they use their CRONUTS mark for such goods. Rather, Opposers’ goods are sweet and savory doughnuts. A “doughnut” is defined as “a small cake of sweetened, or sometimes, unsweetened dough fried in deep fat, typically shaped like a ring or, when prepared with a filling, a ball”. See definition from www.dictionary.com attached as Exhibit 1. While Applicants argue that Opposers’ CRONUTS are a croquette, and not a doughnut, (see for example, p. 2 of Applicants’ memorandum) Opposers’ goods are stated in the Notice of Opposition to be “sweet donuts and savory donuts”. Further, Exhibit 2 hereto, a copy of a full story which Applicants’ refer to, also describes Opposers’ CRONUTS goods as “donuts” (about more of which is discussed *infra*). Opposers’ goods also have holes, like donuts, and note that Applicants do not assert Opposers’ goods lack holes. Opposers submit that this argument of Applicants is misplaced.

B. Dominique Ansel’s work history and publicity.

There are many facts about Dominique Ansel’s work history and publicity in the

“statement of facts” in Applicants’ memorandum that are unsupported by affidavit or declaration, or are outright hearsay. In any event, they are irrelevant to a motion to dismiss, where the sufficiency of allegations in the Notice of Opposition alone are in issue and are to be treated as true for purposes of this motion. Ritchie, 50 U.S.P.Q.2d at 1027.

C. Applicants’ designation CRONUT having acquired distinctiveness.

Applicants argue that their designation CRONUT has acquired distinctiveness. This argument also has no relevance to this motion, since the opposed application is sought for registration on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Act. The issue is whether the designation CRONUT as applied to a hybrid croissant-donut is descriptive of such goods (and Opposers note that USPTO has taken the position that CRONUT is descriptive as applied to a hybrid croissant-donut in connection with Opposers’ pending application SN 86008577, as alleged in Par. 13 of the Notice of Opposition).

D. Applicants’ characterization of what the Lanham Act is designed to protect and Opposer’s goods belonging in Class 30 instead of Class 29 and the effect thereof.

Applicants state “[t]he Lanham Act is designed to give protection to legitimate registered first users of a mark and also provides clear distinctions between products in one class versus another”. Motion to Dismiss, p. 12.

They also assert Opposers’ goods belong in Class 30, not 29, and since Applicants’ goods qualify for Class 30, this makes Applicants “senior users and rightful owners of the Cronut mark”. Id. This argument is plainly wrong. The Lanham Act is not limited to protection of “registered first users”. Further, Applicants incorrectly assume

that the International Classification system has substantive effect in the U.S. and there can be no likelihood of confusion as a result. Section 30 of the Lanham Act provides: "The Director may establish a classification of goods and services, for convenience of Patent and Trademark Office administration, but not to limit or extend the applicant's or registrant's rights". [Emphasis added]. There is no substantive effect to the USPTO's use of the International Classification system, period, and thus Applicants do not become senior users and rightful owners as a result.

E. Opposer Najat Kaanache cannot be an owner of the CRONUTS mark.

Applicants argue that Opposer Kaanache "would not qualify for ownership of the [CRONUTS mark] since she was merely a chef for hire and has shown no proof that she was the originator of the name or holds any intellectual property rights to it". Motion to Dismiss, p. 6. This is purely argument having no foundation in fact. Nor, as demonstrated above, is proof required to defend against a motion to dismiss; the allegations in the pleading are to be considered in and of themselves. They also are to be accepted as true for this motion. Ritchie, 50 U.S.P.Q.2d at 1028.

F. Applicants' argument that Opposers are not prior users of CRONUTS.

Applicants argue Opposers are not prior users of CRONUTS. In support of this argument, Applicants rely on an incomplete quote of a paragraph from a June, 2013 article written by Leslie Brenner of the Dallas Observer. Motion to Dismiss, p. 7. The entire paragraph is:

Well, I'm here to tell you that I sampled chef Kaanache's cronuts at PS back in February — and yes, they were called cronuts on the menu. I didn't mention what they were called it in my critic's notebook first look piece about her cooking there, nor in the review that followed — but I

did discuss the appetizer, which I tasted on three occasions. That's why I can tell you with absolute certainty that Kaanache's cronuts have nothing to do with the cronuts that are making such a huge splash nationally. Kaanache's cronuts were not made from laminated dough, as croissants are (it's the layers of butter in the dough that gives croissants and, it seems, cronuts their flakiness). PS's cronuts were simply cake-like fritters, much like cake donuts, but heavier and not exactly sweet. One time they were crawfish-flavored. **Here's how I described them, including a creamy sauce served with them, the first time I tasted them: "The donuts aren't particularly savory nor sweet, though the cream, actually based on an herbed chicken stock with a touch of curry, is sweetened with honey."** Every time I sampled them, they were served hanging from a wire on a banana-ripening hook. These swinging fritters have little resemblance to Ansel's cronuts, even if they do happen to have the same name. Incidentally, I understand why Ansel calls his cronuts: The name itself is a cross between croissants and donuts. I never understood why Kaanache's were called cronuts. Kaanache could not be reached for comment.

[Emphasis added]. A copy of the entire article is attached to this Memorandum as Exhibit 2.

This article actually supports Opposers' claims in this proceeding because: a) it helps to establish use of CRONUTS during February, 2013 (three months before Applicants' claimed date of first use); b) it shows Ms. Brenner initially referred to Opposers' CRONUTS goods in her critic's notebook as "donuts" before her subsequent review termed them "simply cake-like fritters, much like donuts".

G. Applicants misquote in their assertions that Opposers fail to state a claim under Section 2(d).

Applicants state in p. 12 of their Motion to Dismiss that "Opposers contend they are 'Users of the CRONUTS mark for sweet and savory donuts with rights prior to any claims Opposers may use in designation CRONUT'. This is an incomplete quote. The full quote of the allegation is "Opposers are users of the CRONUTS mark for sweet and savory donuts with rights prior to any rights Opposers may claim in the designation

CRONUT”. Notice of Opposition, Par. 9. The last appearance of “Opposers” in the preceding sentence has been changed to “Applicants” in Opposers’ amended pleading, as per footnote 1 in this memorandum. With this correction and a similar correction made to paragraph 14 in the Notice of Opposition, Opposers state claims upon which relief may be granted.

H. Applicants’ arguments about, and reliance upon, the Polaroid likelihood of confusion factors.

Applicants argue Opposers’ Section 2(d) claim “fails under the test for likelihood of confusion as determined by factors established in” Polaroid Corp. v. Polarad Elecs. Corp., 287 F.2d 492 (2d Cir. 1961). Motion to Dismiss, p. 12. Applicants’ lack of understanding the law again is shown. First, the Polaroid factors have no application in this case. The correct factors to use are set forth in In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973), which are not the same as the Polaroid factors. Second, this motion is to be determined by the sufficiency of allegations in the Notice of Opposition, and not by an application of likelihood of confusion factors (whether unsupported by admissible evidence or not).

Opposers submit that a complete likelihood of confusion analysis under the DuPont factors must be conducted before an order can be issued on the substantive claims in this proceeding (i.e. whether a likelihood of confusion exists). A complete analysis requires the participation by the parties in a discovery and record development period. Thus, Applicants’ arguments in their motion to dismiss that Opposers fails to state a claim of likelihood of confusion under the DuPont factors places the cart before the horse and the Board should find that this matter should proceed through the discovery process.

I. Applicants' arguments about Opposers' reverse confusion claim.

Applicants argue that Opposers' reverse confusion claim fails because "by way of first use and registration date" Applicants are the senior users. Motion to Dismiss, p. 21. Opposers' allegation, however, of an earlier date of first use must be accepted as (and actually is) true for the purposes of this motion. Further, there is no "registration date" that Applicants may rely upon since their Registration No. 4465439 was cancelled by the USPTO since it was inadvertently issued. Even if the registration existed, it would have no bearing on a reverse confusion analysis.

J. Applicants' argument against Opposers' descriptiveness claim.

Applicants argue that due to the strength of, and secondary meaning attaching to, their mark, Opposers' descriptiveness claim must fail. Motion to Dismiss, p. 22. This argument also is misplaced. Again, Applicants have not based their application upon Section 2(f) of the Act asserting acquired distinctiveness. Moreover, Opposers appended as Exhibit 1 to the Notice of Opposition an Office Action and attachments that issued in connection with Opposers' application SN 86008577 for registration of CRONUTS. That Office Action sets forth a Section 2(e)(1) refusal to register Opposers' CRONUTS mark because of descriptiveness and the evidence of descriptiveness adduced by the USPTO in support of that refusal. Clearly, enough has been pled to support Opposers' descriptiveness claim.

K. Applicants' arguments against Opposers' Section 1(a) claim.

Applicants misunderstand Opposers' claim, which asserts that Applicants had not used the CRONUT mark for the goods (i.e., all of the goods) claimed in their application—which is based upon actual use—at the time of filing. None of Applicants'

arguments about bona fide sales, sales made in a good faith effort to develop a business, natural expansion, etc., are germane to Opposers' claim. Curiously, while Applicants' papers are rife with references to use of the designation CRONUT as a name for a hybrid croissant-doughnut pastry, they are singularly devoid of references to the use of CRONUT for any of the other goods in their application, some examples of which are beverage products, cake icing, cake mixes, chocolate, edible cake decorations, edible flour, instant doughnut mixes and pastry dough. Finally, Applicants' arguments about Opposers' supposed lack of use of CRONUTS in Class 30, lack of evidence of prior use and "any evidence of 'creative donuts' prior to Applicants' date of first use" has no relevance to this claim. Motion to Dismiss, p. 24.

L. Applicants' arguments against Opposers' Section 29 claim.

Applicants argue their use of the federal registration symbol is justified because of Registration No. 4465439 (Exhibit 2 to Applicants' memorandum) that issued on January 14, 2014, and also because they "have international trademark in the United Kingdom, Australia, Hong Kong, Monaco and Switzerland". Motion to Dismiss, p. 24 and footnote 89. Again, Applicants' argument is misplaced. The Notice of Opposition alleges that the U.S. registration was cancelled on February 21, 2014 by USPTO notification to Applicants' counsel, Ms. Cook, yet she is asserting rights in the registered mark against Opposers. Applicants also are alleged to be still using the federal registration symbol on their website at www.dominiqueansel.com. Such actions are also alleged to be intentional misuse of the registration symbol by Applicants in an attempt to deceive the public into believing the mark is registered, and they are also wrongfully asserting CRONUT is registered in their enforcement efforts. Notice of

Opposition, Pars. 20-24 and Exhibit 2 thereto. How Applicant can suggest that use of the federal registration symbol is permissible in connection with a canceled registration is mystifying.

M. Applicants' arguments against Opposers' fraud claims.

Applicants argue that "[t]he full list of goods applied for under Class 30 are all available and sold at the bakery", and thus no fraud was committed. Motion to Dismiss, p. 24 and Exhibit 6 thereto. Opposers' fraud claim has been pled with particularity and, again, the allegations of Opposers' pleading must be accepted as true for purposes of this motion. Further, Exhibit 6 does not: a) show CRONUT used by Applicants for any goods; and, b) does not identify all of the goods in Applicants' application. It thus is irrelevant.

CONCLUSION.

Opposers' Notice of Opposition sufficiently pleads their opposition against Applicants' mark. Standing is sufficiently pled and so are the statutory claims. If Applicants' arguments were to be accepted, the concept of notice pleading would be destroyed.

Should the Board disagree with Opposers and conclude any of Opposers' claims are defective, then the Board is requested to allow Opposers to file an amended pleading pursuant to TBMP § 503.03.

WHEREFORE, Opposers respectfully request that Applicants' motion to dismiss be denied. Should the Board disagree, then Applicants request that they be

given an opportunity to amend their pleading to cure any deficiencies found by
the Board.

Respectfully submitted,

BAKER & HOSTETLER LLP

Dated : New York, N.Y.
June 2, 2014

By: 

Robert B.G. Horowitz
Attorneys for Opposer
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New York, N.Y. 10111
(212) 589-4200

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSERS' MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS and Exhibits were served by first class mail, postage prepaid, this 2nd day of June, 2014 in an envelope addressed to Applicant's counsel, as follows:

Candice S. Cook, Esq.
Ca-Co Global Inc. / The Cook Law Group
77 Water Street, 8th Floor
New York, New York 10005



Eileen Joyce

EXHIBIT 1

DOUGHNUT

Q

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Instead, the new **doughnut**-shaped silicon detectors rely on measuring light frequency.

There is no need for dark energy, gravity folds space into what could be ...

Maybe it's the floor where elevators don't stop, or the **doughnut** that bakers ...

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"He ketched a frog one day and took him home and said he cal'lated to educate him; and so he never done nothing for three months but set in his back yard and learn that frog to jump. And you bet he did learn him, too.

dough·nut [doh-nuh t, -nuht] Show IPA

noun

- a small cake of sweetened or, sometimes, unsweetened **dough** fried in deep fat, typically shaped like a ring or, when prepared with a filling, a ball.
- anything shaped like a thick ring; an annular **object**; toroid.

Also, **donut**.

Origin:

1795–1805; **dough** + **nut**

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World English Dictionary Collins

doughnut or esp (US) **donut** ('dəʊnʌt) ?

— n

- a small cake of sweetened dough, often ring-shaped or spherical with a jam or cream filling, cooked in hot fat
- anything shaped like a ring, such as the reaction vessel of a thermonuclear reactor

— vb , -nuts , -nutting , -nuttied

- informal* (tr) (of Members of Parliament) to surround (a speaker) during the televising of Parliament to give the impression that the chamber is crowded or the speaker is well supported

donut or esp (US) **donut**

— n

— vb

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Word Origin & History Etymonline

doughnut

1809, Amer.Eng., from dough + nut. First recorded by Washington

GREAT
FARES

TO SCANDINAVIA
AND BEYOND

STOCKHOLM
COPENHAGEN
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HELSINKI
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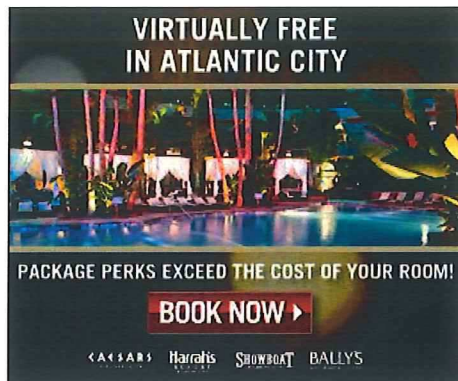
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Irving, who described them as "balls of sweetened dough, fried in hog's fat, and called doughnuts, or olykoeks."

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He'd give him a little punch behind, and the next minute you'd see that frog whirling in the air like a doughnut—see him turn one summerset, or maybe a couple, if he got a good start, and come down flat-footed and all right, like a cat.... Smiley said all a frog wanted was education, and he could do most anything—and I believe him."

-Mark Twain

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EXHIBIT 2

Letting the air out of Najat Kaanache's 'cronut' scandal



By [Leslie Brenner](#)

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2:43 pm on June 10, 2013 | [Permalink](#)



Cronuts from New York City's Dominique Ansel Bakery (Andrew Burton/Getty Images)

Last month, New York baker **Dominique Ansel** created a new baked treat — a cross between a doughnut and a croissant — and he dubbed it the “cronut.” New Yorkers reportedly have been lining up around the block from Ansel’s eponymous SoHo bakery to get their hands on the flaky, puffy, sweet, rose-vanilla-flavored cakes, which have been [making headlines](#) like mad for weeks. All across the country, people are stricken with [cronut fever](#).

The giant hullabaloo over Ansel’s cronuts apparently has one Dallas chef in quite a froth. Judging by the number of times she has tweeted about it in the last week, including tweets to Time magazine, [Eater](#) and **Anderson Cooper**, [PS](#) chef **Najat Kaanache** seems eager to set the record straight: She invented the cronut here in Dallas — all the way back in February. To Eater Dallas’ **Whitney Filloon**, she tweeted “genius, Cronuts have been on my Dallas menu since February. How could they have been invented in NY in the middle of May?”



Najat Kaanache's cronuts at PS (Kye R. Lee/Staff Photographer)

Well, I’m here to tell you that I sampled chef Kaanache’s cronuts at PS back in February — and yes, they were called cronuts on the menu. I didn’t mention what they were called in my [critic’s notebook first look piece](#) about her cooking there, nor in the [review that followed](#) — but I did discuss the appetizer, which I tasted on three occasions. That’s why I can tell you with absolute certainty that Kaanache’s cronuts have nothing to do with the cronuts that are making such a huge splash nationally. Kaanache’s cronuts were not made from laminated dough, as croissants are (it’s the layers of butter in the dough that gives croissants and, it seems, cronuts their flakiness). PS’s cronuts were simply cake-like fritters, much like cake donuts, but heavier and not exactly sweet. One time they were crawfish-flavored. Here’s how I described them, including a creamy sauce served with them, the first time I tasted them: “The donuts aren’t particularly savory nor sweet, though the cream, actually based on an herbed chicken stock with a touch of curry, is sweetened with honey.” Every time I sampled them, they were served hanging from a wire on a banana-ripening hook. These swinging fritters have little resemblance to Ansel’s cronuts, even if they do happen to have the same name. Incidentally, I understand why Ansel calls his cronuts: The name

itself is a cross between croissants and donuts. I never understood why Kaanache's were called cronuts. Kaanache could not be reached for comment.

A few days after Ansel started selling his cronuts in New York, PS abruptly changed concepts for the second time in its brief life (it opened as **Private Social** with **Tiffany Derry** as chef in 2011, earning a four-star review a couple months later). Kaanache's freewheeling [modernist menu was thrown out — cronuts and all](#) — after a one-star review in late April, and now the restaurant features Texas cooking. Kaanache is still in charge of the kitchen.

On Saturday, Kaanache tweeted, "Today the tasting menu will have the sweet version of Cronuts." Subsequent tweets say they've been on her menu "for months," though they definitely weren't on the menu when PS introduced its new Texas-themed menu.

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